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STATE OF ALABAMA

SEP 25 1989

89-00438

Honorable Mahlon McConnell
Constable
Route 13, Box 298
Jasper, Alabama 35501

Constables - Arrest - Jails -
Prisons and Prisoners

Before an arrest is made, a constable should contact the sheriff and the municipal governing body in his county to determine the specific procedures to be followed in order for a person arrested to be accepted into custody by the sheriff and the city officials and to determine which facility a person should be taken to.

Dear Mr. McConnell:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Given that a constable has the power of arrest, what process should a constable follow if and when an arrest is made? Include information as to whether the person arrested should be booked exclusively in the county jail or in a city jail if the arrest is made in a city having a jail. Also, would jailers be expected to accept such an arrested person on the same basis as any other duly authorized arrest?

FACTS AND ANALYSIS

As stated in previous opinions, a constable has the power of arrest but his primary duty is to serve as the executive officer of his precinct and to perform the duties set forth in Code of Alabama 1975, § 36-23-6. See opinion to Honorable Douglas A. Valeska, District Attorney, under date of June 8, 1989, and opinion to Honorable James L. Craig, Constable, under date of April 8, 1985.

Code of Alabama 1975, § 14-6-1 provides:

"The sheriff has the legal custody and charge of the jail in his county and all prisoners committed thereto, except in cases otherwise provided by law, and may appoint a jailer for whose acts he is civilly responsible."

This office has previously held that since the sheriff is the legal custodian of the county jail he can require that before he takes into custody any person arrested by a constable that the constable swear out a warrant for the arrest of such person. Opinion to Honorable James L. Craig, Constable, under date of April 8, 1985, and opinion to Honorable M. A. Lee, Leeds, under date of August 15, 1975.

Pursuant to Code of Alabama 1975, § 11-47-7, the municipal governing body has control over the city jail. This section provides:

"All cities and towns of this state shall have the power to establish, erect, maintain, and regulate jails, . . . station houses and prisons . . ."

We also note that pursuant to Code of Alabama 1975, § 11-80-3, a municipality may contract with a county to use the county jail. Section 11-80-3 states:

"Municipalities and counties may contract with each other for the ownership or use and occupation of parts of city halls, city jails, county courthouses and jails or other public buildings held and owned by such municipalities or counties

located within such municipalities, and such contract shall be binding upon both the municipality and the county until revoked by the joint agreement and action of both parties to such contract." (emphasis added.)

Based upon the foregoing, the specific procedure to be followed varies among the counties and cities. Generally speaking, a person arrested for a municipal ordinance violation should be taken to the city jail, if there is one. A person arrested for any other violation should be taken to the county jail regardless of whether the arrest is made within a city having a jail.

Since the sheriff is the legal custodian of the county jail and the municipal governing body is the legal custodian of the city jail, you should contact the sheriff and the city officials in your county before an arrest is made to determine the specific procedure each requires in order for a person arrested to be accepted into custody by the sheriff and the city officials and to determine which facility a person should be taken to.

CONCLUSION

Before an arrest is made, a constable should contact the sheriff and the municipal governing body in his county to determine the specific procedures to be followed in order for a person arrested to be accepted into custody by the sheriff and the city officials and to determine which facility a person should be taken to.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:


BRENDA FLOWERS
Assistant Attorney General